

**Mercury Pub. Affairs, LLC v Gramercy Park Servs.,  
LLC**

2012 NY Slip Op 33928(U)

January 4, 2012

Supreme Court, New York County

Docket Number: 104570/11

Judge: Doris Ling-Cohan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY  
PRESENT: Hon. Doris Ling-Cohan, Justice

Part 36

MERCURY PUBLIC AFFAIRS, LLC, D/B/A  
IGR GROUP and FHGR,

Plaintiff,

-against-

GRAMERCY PARK SERVICES, LLC,  
GRAMERCY PARK MEDICAL GROUP P.C.,  
and RAYMOND SANCHEZ,

Defendants.

INDEX NO. 104570/11

MOTION SEQ. NO. 001

**FILED**

JAN 05 2012

The following papers, numbered 1-6 were considered on the motion for a default judgment and cross-motion to file a late answer:

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<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Order to Show Cause, — Affidavits — Exhibits _____	<u>1, 2</u>
Answering Affidavits — Exhibits _____	<u>        </u>
Replying Affidavits _____	<u>6</u>
Cross-Motion: [ X ] Yes [ ] No	<u>3, 4, 5</u>

Upon the foregoing papers, it is ordered that this motion and cross-motion are decided as indicated below.

This is an action for the payment of consulting services rendered by plaintiff Mercury Public Affairs LLC to defendant Gramercy Park Medical Group P.C. (Gramercy Medical) and Gramercy Park Services, LLC (Gramercy Services), based on an alleged breach of contract and account stated. Plaintiff commenced this action by Summons with Notice on April 15, 2011. Defendant Raymond Sanchez (Sanchez) was allegedly served on May 2, 2011, at his place of employment, by personal delivery to George Owusu (Owusu), security and general agent, and defendants Gramercy Medical and Gramercy Services, on April 28, 2011, also via service to Owusu.

Plaintiff made an application to the County Clerk on June 24, 2011 for a money judgment.

However, plaintiff's application was rejected by the Clerk as against Gramercy Services, for invalid service. Plaintiff now moves for a default judgment to be entered against defendants Gramercy Medical and Sanchez for their failure to timely appear or answer the complaint. Plaintiff also seeks to discontinue this action against Gramercy Services, which is unopposed. Sanchez cross moves for leave to file a late answer.

It is well settled in New York that courts favor resolution of actions on their merits rather than on default. *Picinic v Seatrains Lines, Inc.*, 117 AD2d 504, 508 (1st Dep't 1986). As such, there is a liberal policy towards "opening default judgments in furtherance of justice so that parties may have their day in court." *Id.* Similar to the standard for vacating a default judgment, a party moving to prevent a default judgment from being entered must demonstrate a reasonable excuse for the default and a meritorious defense to the action. CPLR C3215:24; *Wehringer v Brannigan*, 232 AD2d 206, 206 (1st Dep't 1996).

Here, Sanchez has presented sufficient grounds to warrant a denial of plaintiff's motion for a default judgment as to him and the granting of his cross-motion to allow the late filing of his answer. While plaintiff argues that Sanchez had knowledge of this action prior to receiving this motion, but failed to answer, Sanchez has submitted an affidavit, in which he explains that his employer informed him of a pending litigation, but that he had no knowledge that this litigation included him as an individual defendant until he received plaintiff's motion papers. Sanchez contends that his failure to answer the complaint was unintentional. Sanchez alleges that he was unaware that this action had been filed against him personally, as well as against his employer, as he was not properly served with process. Sanchez further contends that he was not aware that he was being personally sued in this action until he received plaintiff's motion papers. Sanchez states that he believed Gramercy Medical was filing an answer. Upon realizing that he was a party to this action, and that Gramercy Medical did not file an answer, Sanchez contacted and retained an attorney, and this cross-motion was subsequently filed. As to his

meritorious defense, Sanchez contends that he is not responsible for the damages, claimed by plaintiff, resulting from an alleged breach of contract by defendants. Specifically, Sanchez asserts that the contract was signed by him as an administrator and office manager for Gramercy, not as an officer or interested party or as an individual, such that he would be personally liable for any alleged damages from an alleged breach of contract.

Plaintiff's motion is denied, to the extent that it seeks a default judgment against Sanchez, as Sanchez has sufficiently established a reasonable excuse for his default and a meritorious defense. With regard to Sanchez's cross-motion to file a late answer, CPLR § 3012 (d) provides that "[u]pon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of a reasonable excuse for delay or default". Upon the within submissions that Sanchez has presented sufficient grounds to serve and file his late answer.

As previously indicated, "a strong public policy exists in this State for resolving disputes on their merits, and toward that end a liberal policy has been adopted ... in furtherance of justice so that parties may have their day in court". *Picinic v Seatrains Lines, Inc.*, 117 AD2d 504, 508 (1st Dep't 1986). See also *Noriega v Presbyterian Hosp. in the City of New York*, 305 AD2d 220, 221 (1st Dept 2003); *Atkins v Malota*, 1 AD3d 294, 294 (1st Dept 2003), *lv dismissed* 3 NY3d 701 (2004); *Higgins v Bellet Constr. Co.*, 287 AD2d 377 (1st Dept 2001); *Silverio v City of New York*, 266 AD2d 129 (1st Dept 1999).

Given that Gramercy Medical has failed to answer plaintiff's complaint or appear in this proceeding and this motion, plaintiff's motion for default as to Gramercy Medical is granted. CPLR 3215 provides that "[w]hen a defendant has failed to appear...the plaintiff may seek a default judgment against him, ...The judgment shall not exceed in amount or differ in type from that demanded in the complaint or stated in the notice served pursuant to subdivision (b) of rule 305."

Accordingly, it is

ORDERED that the portion of plaintiff's motion seeking a default judgment against defendant Sanchez is denied; and it is further

ORDERED that the portion of plaintiff's motion seeking a default judgment against defendant Gramercy Medical is granted and an inquest shall be held, at or shortly after trial (with scheduling to be determined by the trial judge), assessing damages against such defaulting defendant and entering judgment accordingly, with costs and disbursements; and it is further

ORDERED that the portion of plaintiff's motion which seeks to discontinue this action against defendant Gramercy Services is granted; and it is further

ORDERED that defendant Sanchez's cross motion which seeks leave of court to file a late answer is granted and the Answer dated August 2, 2011 (Notice of Cross-Motion, Exh. B) is deemed timely served and filed, upon service of a copy of this order with notice of entry; and it is further

ORDERED that, within 30 days of entry, Sanchez shall serve upon all parties to this action a copy of this decision and order, together with notice of entry; and it is further

ORDERED that discovery shall be completed expeditiously. (By separate order, a preliminary conference order and compliance conference date is being sent).

This constitutes the Decision and Order of the Court.

**FILED**

JAN 05 2012

Dated:

1/4/12

NEW YORK  
COUNTY CLERK'S OFFICE

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DORIS LING-COHAN, J.S.C.

Check one:  FINAL DISPOSITION  
Check if Appropriate:  DO NOT POST

NON-FINAL DISPOSITION